

STATE OF MICHIGAN
COURT OF APPEALS

MURIEL JEAN MOONEY f/k/a MURIEL JEAN
ARENDS,

UNPUBLISHED
April 12, 2012

Plaintiff-Appellee,

V

BERNARD ARENDS,

No. 302967
Washtenaw Circuit Court
LC No. 02-0001222-CZ

Defendant-Appellant.

Before: FORT HOOD, P.J., and CAVANAGH and K. F. KELLY, JJ.

PER CURIAM.

Defendant appeals as of right from the trial court's order confirming and clarifying the April 21, 2003, judgment in favor of plaintiff. We affirm.

This case arises from an award of alimony in gross and attorney fees in the 1979 divorce judgment between the parties. Plaintiff alleged that defendant did not make the required payments and obtained a judgment for sums due in 1982. In 1992, plaintiff filed a complaint to renew the judgment which resulted in a default judgment against defendant. In 2003, plaintiff once again obtained a renewed default judgment. After plaintiff attempted to enforce the judgment in Illinois, defendant contested the 2003 judgment. At the direction of the Illinois court, plaintiff filed a motion for clarification and confirmation of the 2003 judgment in Michigan. Defendant alleged that the judgment could not be enforced, raising defenses of jurisdictional defects, fraud, lack of due process, improper calculations, satisfaction of judgment, and real party in interest. The trial court rejected defendant's challenges, and we affirm.

Defendant contends that the trial court lacked personal jurisdiction. We disagree. Although a trial court's factual findings are reviewed for clear error, the application of the law to the facts is reviewed de novo. *Centennial Healthcare Mgt Corp v Dep't of Consumer & Ind Servs*, 254 Mich App 275, 284; 657 NW2d 746 (2002). A challenge to personal jurisdiction presents a question of law which this Court reviews de novo. *Poindexter v Poindexter*, 234 Mich App 316, 319; 594 NW2d 76 (1999). The plaintiff bears the burden of demonstrating that the lower court possesses personal jurisdiction over a defendant. *Electrolines, Inc v Prudential Assurance Co, Ltd*, 260 Mich App 144, 166; 677 NW2d 874 (2003). A challenge to personal jurisdiction is waived when a party fails to timely challenge jurisdiction in accordance with the court rules. *Id.* at 163-164. "Any subsequent action based on the original judgment, even if

brought pursuant to a new complaint, is deemed to be a continuation of the original action so that [personal] jurisdiction is proper in the court that rendered the original judgment.” *Ewing v Bolden*, 194 Mich App 95, 101; 486 NW2d 96 (1992).

In *Ewing*, the circuit court acquired personal jurisdiction over the defendant when it issued a judgment of divorce in 1956. *Id.* at 97, 101. In 1989, plaintiff moved to liquidate and reduce to a separate judgment child support that was in arrears. *Id.* at 97. This Court held that the action filed in 1989 to collect the original judgment was merely a continuation of the 1956 divorce action. *Id.* at 101. Therefore, the circuit court continued to have personal jurisdiction over the defendant. *Id.* Pursuant to the *Ewing* decision, defendant’s challenge to personal jurisdiction fails. Defendant’s attempt to distinguish *Ewing* based on the type of support at issue, child support as opposed to alimony, is without merit. In light of the fact that the trial court had personal jurisdiction for purposes of the 1979 judgment of divorce, the trial court had continuing personal jurisdiction over the attempt to collect sums delineated in the original divorce judgment, even if filed as a new action.

Next, defendant raises a litany of issues relating to the calculation of interest, satisfaction, and the application of res judicata and collateral estoppel. In light of the fact that defendant cannot satisfy the requirements to set aside a judgment, MCR 2.612(C), and cannot collaterally attack the 2003 judgment, we affirm.

A court is authorized to relieve a party from a final judgment, MCR 2.612(C)(1) for the following reasons:

- (a) Mistake, inadvertence, surprise, or excusable neglect.
- (b) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under MCR 2.611(B).
- (c) Fraud (intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party.
- (d) The judgment is void.
- (e) The judgment has been satisfied, released, or discharged; a prior judgment on which it is based has been reversed or otherwise vacated; or it is no longer equitable that the judgment should have prospective application.
- (f) Any other reason justifying relief from the operation of the judgment.

For purposes of MCR 2.612(C)(1)(a), (b), and (c), the motion must be made within one year after entry of the judgment, order, or proceeding. MCR 2.612(C)(2). For all other provisions, the motion must be made within a reasonable time. *Id.*

In *Heugel v Heugel*, 237 Mich App 471, 478-479; 603 NW2d 121 (1999), this Court addressed the circumstances warranting relief pursuant to MCR 2.612(C)(1)(f):

In order for relief to be granted under MCR 2.612(C)(1)(f), the following three requirements must be fulfilled: (1) the reason for setting aside the judgment must not fall under subsections a through e, (2) the substantial rights of the opposing party must not be detrimentally affected if the judgment is set aside, and (3) extraordinary circumstances must exist that mandate setting aside the judgment in order to achieve justice. Generally relief is granted under subsection f only when the judgment was obtained by the improper conduct of the party in whose favor it was rendered. [Citations omitted.]

The “exact parameters” of MCR 2.612(C)(1)(f) provide for relief “where the judgment was obtained by the improper conduct of the party in whose favor it was rendered, or resulted from the excusable default of the party against whom it was directed, under circumstances not covered by the other clauses permitting relief from a judgment and where the substantial rights of other parties in the matter in controversy were not affected.” *Rose v Rose*, 289 Mich App 45, 53-54; 795 NW2d 611 (2010) (internal quotation marks and citations omitted). The widest avenue for relief pursuant to MCR 2.612(C)(1)(f) requires the presence of extraordinary circumstances and a demonstration that setting aside the judgment will not detrimentally affect the substantial rights of the opposing party. *Id.* at 58. MCR 2.612(C)(1)(f) must be cautiously applied in divorce cases. *Id.*

First, we conclude that the challenge to the judgment did not occur within a reasonable time. MCR 2.612(C)(2). The first judgment for outstanding sums due and owing entered in 1982. The judgment was renewed in 1992, and 2003. Defendant did not protest the 2003 judgment until plaintiff filed an enforcement action in Illinois. Plaintiff presented documentary evidence establishing that defendant was aware of the complaints to renew the judgment when attorneys for defendant contacted plaintiff’s counsel. However, these attorneys never filed appearances or pleadings to challenge the original and renewal of the subsequent judgments. Although defendant asserted that the underlying sums were satisfied, the records from the friend of the court did not definitively substantiate that assertion, and defendant never filed a satisfaction of judgment with the lower court. Defendant failed to demonstrate misconduct by plaintiff, excusable default, and extraordinary circumstances. *Rose*, 289 Mich App at 53-54, 58.

Additionally, we conclude that defendant cannot collaterally attack the 2003 judgment.

A collateral attack on a judgment is an attempt to avoid, defeat, or evade it, or deny its force and effect, in some incidental proceeding not provided by law for the express purpose of attacking it. A collateral attack occurs whenever a challenge is made to a judgment in any manner other than through a direct appeal. * * * A proceeding to enforce a judgment is collateral to the judgment, and no inquiry into its regularity or validity can be permitted in such a proceeding[.] [20 Michigan Law & Practice, Judgments, § 152, p 153 (footnotes omitted).]

When a judgment creditor files an action to reach assets belonging to the judgment debtor, the debtor is precluded from collaterally attacking the original judgment. *Boehmer v Herling*, 248 Mich 380, 382; 227 NW 755 (1929). An error that may be alleged in a direct appeal may not be challenged in a collateral attack. *In re Hatcher*, 443 Mich 426, 439-440; 505 NW2d 834 (1993) (citation omitted). If such delayed attacks were permissible, lower court decisions would always

be subject to dispute, and there would be no finality of judgment. *Id.* at 440. In *Hatcher*, the Supreme Court severed a party's ability to challenge a lower court decision years later by collateral attack when a direct appeal was available. *Id.* at 444. The public policy of this state favors finality of judgments. See *King v McPherson Hosp*, 290 Mich App 299, 304-305; ___ NW2d ___ (2010).

In the present case, there is no indication that defendant timely filed a direct appeal from the 2003 judgment (or the two underlying judgments). Consequently, defendant cannot collaterally attack the 2003 judgment. *Hatcher*, 443 Mich at 444; *Boehmer*, 238 Mich at 382.

Affirmed. Plaintiff, as the prevailing party, may tax costs. MCR 7.219.

/s/ Karen M. Fort Hood
/s/ Mark J. Cavanagh
/s/ Kirsten Frank Kelly